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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 29th DAY OF MAY, 1998

BEFORE

THE HON'BLE MR. JUSTICE K.N. PALLIKARJUNA

M.R.C.P. No. 1748/1992

BETWEEN:

1. N.Ramaprasad (since dead)
   by his L.Rs.

   (a) K. Nirmalkumar,
   (b) R.Umapathy,
   (c) R.Bhaskar,
   (d) R.Srinivasulu.

1(a) to 1(d) are the sons of
late N.Ramaprasad (petitioner No.1),
Majors, C/o M/s Vijayalakshmi
Industries, Old No.39, New
No.85, St. John's Church Road,
Bangalore 560 005. ... PETITIONERS

(By Advocate Sri. M.S.Prabhakar)

AND:

C.N.Kumar S/o late C.R.Nanjappa,
major, No.40, Hospital Road,
Civil Station, B'lore-560 001. ... RESPONDENT

(By Advocate Sri. Mohandas N.Hegde)

. . . .

This revision Petition is filed under Sec.50(1) of the Karnataka Rent Control Act,1961 against the order dated 21.1.1992 passed in HRC No.1897/86 on the file of the Small Causes Judge, Bangalore, allowing the petition filed under Sec.21(1)(p) of the Karnataka Rent Control Act.

The petition coming on for hearing along with I.A.iii, having stood over for orders, made the following:

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O R D E R

This is a tenant's revision under Sec.50(2) of the Karnataka Rent Control Act (hereinafter referred to as 'The Act' for short), Addl. Small Causes Judge, Bangalore on March 21,1992 while rejecting the claim of the land-lord for eviction under Sec.21(1)(a) and (j) of the Act in HRC.No.1897/86 directing the eviction of the tenant under Sec.21(1)(p) of the Act. This order is under challenge in this revision petition.

This revision is filed on April 15,1992 and it would appear that in the mean time on April 2,1992 tenant N Ramaprasad died and therefore this revision petition is filed along with the application I.A.I under Order-22 Rule-4 R/W 151 C.P.C. with a prayer to bring the L.Rs. (4 sons) of the deceased revision-petitioner on record in place of the tenant. I would refer to the petitioner-landlord and respondent-tenant (deceased) as they were arrayed in the eviction petition, as land lord and tenant for the purpose of convenience.

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2. The landlord sought for eviction of the tenant from the premises bearing old No. 35 and new No.[illegible] situated in St. [illegible] Church Road, Bangalore City bounded on the west by Netaji Road, south by St. John's road and east and west by private property. Premises was leased for the purpose of running an industry. Though the tenant resisted the petition contending inter-alia that there exists no relationship of landlord and tenant, did not press it at the trial as I could see from the record.

3. It is unrepudiated that the landlord is the absolute owner of the property in question though in fact it was purchased by his father on behalf of the minor somewhere in the year 1957. Ex.P-1 is the sale deed. Tenant took it on lease in the year 1958 for running an industry under the name and style 'Vijayalakshmi Industries'. It is also not disputed that somewhere in the year 1970 certain portion measuring 10' x 40' from out of the vacant area in the disputed premises was taken over by the Corporation of the City of Bangalore for widening the Church Road. It is also unrepudiated that the tenant purchase

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Sections 14(1) of Rent Act, 1960 read in the year 1984 or 1985, put up a certain building on the said [illegible] land for the purpose of running an industry and in fact shifted major portion of the machinery (60% according to the evidence of RW-1) to the newly put up building immediately after construction and started functioning from there. It is therefore, in the year 1986 land-lord made an application for eviction on the ground that the tenant is a defaulter and has not paid the rent within two months after the receipt of the statutory notice, that the building is old and dilapidated and needs immediate demolition and re-construction, that the tenant has acquired a suitable building and therefore he is liable for eviction under sec.21(1)(a)(i) and (o) of the Act.

Tenant resisted the application for ending inter-alia that there exists no relationship of land-lord and tenant, that he was never in arrears of rent at any time except for few months and even that arrears is paid during the pendency of the trial, that the building needs no demolition and [illegible] renovation.

not suitable for the purpose of carrying on the business which he started and continued in the disputed premises.

4. Land-lord examined himself as PW-1 and produced documents Exs P-1 to 37. Tenant or any one of his sons are not examined, it is only the manager who is examined as RW-1 and documents Exs.R-1 to 20 were marked on behalf of the tenant. Learned trial Judge on hearing the counsel for both the parties and considering the evidence both oral and documentary by the impugned order rejected the claim of the land-lord under Sec.21(1)(a) and (j) but directed eviction of the tenant under Sec.21(1)(p) of the Act holding that the acquisition of the building during the pendency of the tenancy is suitable for the purpose of running the industry, the business which is carried on in the disputed premises. It may be noted here that the land-lord in evidence conceded that he would not press his claim for eviction under Sec.21(1)(a) of the Act and that was also not pressed at the hearing.

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[illegible] [illegible] [illegible] the recent revision [illegible] and the land landlord respondent.

6. The main thrust of the argument of the learned counsel for the tenant is that the court was wrong in not recording a finding whether the new premises is 'suitable' and an alternate accommodation for carrying on the business which was carried in the disputed premises and therefore the order is liable to be set aside. He also relied on the decision of this court in FAKIRAGA V.S. CHEKHEREYYA (C.L.R. 2000(2) LAR. 290x).

Learned counsel for the land lord respondent on the other hand contended that not only there is enough pleading in regard to the suitability or otherwise of the alternate accommodation available to the tenant, but sufficient evidence is placed on record to establish that the acquisition by the tenant is a suitable building and since the tenant has alternate accommodation for carrying on business is liable to be evicted. He also relied on the decisions of this court in CANNANTIN AND V.S.

[illegible]

[illegible]

[illegible]

[illegible]

10. As I have said earlier, it is no longer in dispute that the respondent has not occupied vacant site measuring much more in area than the disputed premises in Kochas constituency, nor has it built a permanent building on the leased land (Plot 1 Plan 1 and Plot 2 Plan 2) as 80% and licensed an industry in the said building. The dispute is only in respect of the difference from the licensed premises. What emerges from the evidence of DW 1 is that the leased premises measured under 5000 square feet out of which 4000 square feet has been taken by the municipality for widening the Thika Road whereas the land available is now four acres less 4000 square feet and building is put in an area of 12000 square feet consisting of two floors built in an area measuring 1400 square feet with concrete roof and the rest is of asbestos sheet roof. It has also come in the evidence that immediately after the construction in about 1983-84 60% of the machinery were shifted from the leased premises and is not functioning. The evidence is that certain activities electroplating is being continued in the disputed premises and the office and the crew room are also located in the

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[illegible] Nevertheless, it may be noted that the revision petitioner [illegible] under [illegible] Rule [illegible] CPC 1908 [illegible] for permission to produce certain documents [illegible] additional evidence [illegible] be considered [illegible] [illegible] Rule [illegible] [illegible] [illegible] [illegible] considered as additional evidence under sub-clause [illegible] sub-rule [illegible] Rule [illegible] of Order 41 if only it is established that the party seeking to produce additional evidence was unable to get such evidence [illegible] even after exercising due diligence [illegible] above [illegible] [illegible] [illegible] [illegible]

[illegible]

> [illegible]

[illegible]

[illegible]

Sd/-
JUDGE